

NY/NJ-3



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET No. 33388 (Sub-No. 91)

**CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-CONTROL AND OPERATING LEASES/AGREEMENTS-
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

(GENERAL OVERSIGHT)

COMMENTS OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

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**ENTERED
Office of Proceedings**

JUL 17 2002

**Part of
Public Record**

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Dated: July 17, 2002

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COMMENTS OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

The Port Authority of New York and New Jersey ("the Port Authority") is an agency of the States of New York and New Jersey whose bi-state compact was approved by the Congress. Foremost among the statutory responsibilities of the Port Authority is the protection of the commerce of the New York/New Jersey Port District. The Port District, a statutorily defined area, is a district that is roughly a 25 mile radius around the Statue of Liberty, and includes virtually all of the North Jersey Shared Asset Area ("NJSAA") as that area was defined in the Application in this proceeding.

The Port Authority has actively participated throughout the course of these proceedings. In its brief filed in the application proceeding (NY/NJ-19), the Port Authority sought the imposition of certain conditions to which the Applicants subsequently agreed. These conditions were as follows:

“1. Norfolk Southern, CSX, and the Port Authority (“the parties”) shall meet regularly in accordance with a mutually amenable schedule, to discuss major issues affecting the Port Authority and the provision of rail service to the Port District, for the purpose of promoting effective and efficient transportation for the District. The parties shall meet no less than quarterly following the decision of the Board’s approval of the proposed transaction. Present at these meetings shall be senior officials of the parties, including such officials from the CSAO. In the event that any issues cannot be resolved by the representatives of the parties then the issues may be referred by the Chairman and Executive Director of the Port Authority to the Presidents of CSX and Norfolk Southern for resolution.

2. a) In the event the Board approves the Application, the Port Authority shall review CSX’s and Norfolk Southern’s planning for the operations within the Port district and consult with CSX and Norfolk Southern from time to time with respect to significant changes to CSAO operations within the District.

b) The Port Authority, CSX and Norfolk Southern shall agree upon the development of certain operational data that is appropriate and necessary for the Port Authority to analyze the efficiency or rail operations within the Port District and between the Port District and major origins or destinations. To this end, the parties shall meet on a periodic basis to develop and review data. Such data shall include statistical data of the type currently produced by Conrail for the Port Authority, including aggregated traffic, car supply and distribution data, as well as data that will demonstrate transit times and performance standards for several time sensitive traffic types. The parties shall agree that the production, handling and disclosure of any such data will be treated in accordance with all applicable laws, and will be maintained, where appropriate, in a confidential

manner to protect any proprietary or confidential information.

3. a) CSX and Norfolk Southern shall provide the Port Authority with the capital plans and budgets for CSAO within the Port District, and CSX and Norfolk Southern will continue to provide the Port Authority the same level of cooperation provided by Conrail in the past with respect to capital spending for operations within the Port District.

b) Should any impasse arise between Norfolk Southern and CSX that they submit to arbitration under the Shared Assets Agreement regarding CSAO improvements or capital investment in the Port District affecting the Port Authority's interest, the Port Authority will have a right to present an amicus position to the arbitrator or arbitrators setting forth the Port Authority's views from a regional perspective.

4. CSX, Norfolk Southern and CSAO shall provide and implement economic development programs designed to promote the development of rail traffic within the Port District. CSX, and Norfolk Southern shall consult with the Port Authority in the development of such plans, and the Port Authority shall apprise CSX and Norfolk Southern of opportunities for the development of rail traffic affecting the Port District. To the extent it deems appropriate, the Port Authority shall seek input from CSX, Norfolk Southern and CSAO in its capital planning process.

5. The Port Authority shall have standing before the Board to seek whatever necessary relief during such time as the Board maintains oversight following approval of the transaction with respect to the Port District."

Quite obviously, rail transportation to, from and within the NJSA is of vital importance to the Port Authority and to the economy of the Port District. The Port Authority has invested, and continues to invest, billions of dollars in port related facilities. These investments would be

severely imperiled without the rail services necessary to move export/import traffic through the Port of New York and New Jersey. The Port Authority has participated in these proceedings to protect its port related investments and to protect the commerce of the Port District.

In its first comments in these oversight proceedings (NY/NJ-2) the Port Authority noted that: "Notwithstanding the combined cooperative efforts of the Port Authority and the carriers, and even while NS and CSX, as well as the CSAO, have labored mightily to improve service, systematic problems, particularly capital problems, are preventing those carriers from providing the quality and quantity of rail service that was promised in the acquisition proceeding." The Port Authority is pleased that many of the service problems that initially plagued the NJSAA have been resolved. However, all is not well. Localized service problems still exist from time to time, and the carriers remain woefully short of capital to make investments in the NJSAA.

The Port Authority has sought, and continues to seek, public sector funds to provide necessary rail investment. Those efforts have been hampered by the events of September 11, 2001, and the resulting dislocation of staff and priorities. Currently, normalized operations are returning within the Port Authority and within the Port District. Thus, the Port Authority expects to re-energize its efforts to provide public sector funds. To accomplish this, the Port Authority will rely heavily upon the information obtained as a result of its regular meetings with the carriers held pursuant to the conditions agreed to by the parties and outlined above.

The Board's notice of June 10, 2002, asks for comments on the need for continued oversight. The Port Authority is of the firm opinion that oversight should continue for several reasons. First, the volumes of traffic moving through the Port Authority on-dock ExpressRail facility are reaching record levels on a regular basis. For example, the second quarter of 2002

saw an increase in container lifts of 27.8% over the same period in 2001. Nearly 60,000 containers were handled at that facility in the second quarter. In addition, the Port Authority is working with the City of New York to provide renewed rail service to Staten Island and the Howland Hook marine terminal facility located there. Such rail service will increase the number of rail containers moving through the Port District and strain the already strained rail capacity of the NJSAA.

Second, the Port Authority, and other parties, have heard persistent rumors that the carriers might seek to fundamentally alter the nature of operations within the NJSAA. The NJSAA concept was a integral part of the application that was approved by the Board herein. Any significant change in that concept or the relations determined by that concept should be the subject of meaningful review by the interested parties, including the Port Authority, and ultimate review and approval by the Board. Maintaining oversight provides the easiest and most reliable way to provide that necessary review and approval if warranted.

The Port Authority has no interest in creating or maintaining unnecessary burdens on the carriers. However, the oversight necessary to scrutinize activities within the NJSAA, and the Port District are warranted, and should not be unduly burdensome for the carriers. Indeed, the Port Authority is unaware of any statement by either carrier that would indicate that continued oversight is causing problems.

In view of the foregoing, the Port Authority submits that oversight should continue to the extent necessary to provide the necessary scrutiny within the NJSAA and the Port District and keep in place the conditions agreed to by the carriers and the Port Authority as a basis for the Port Authority's support of the application in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Hugh H. Welsh".

Hugh H. Welsh, Deputy General Counsel
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New Jersey
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A handwritten signature in cursive script, appearing to read "Paul M. Donovan".

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*Attorneys for The Port Authority of New York
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CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of July, 2002, caused a copy of the foregoing comments of the Port Authority of New York and New Jersey to be served upon all parties to this proceeding by first class mail, postage prepaid.

A handwritten signature in cursive script, appearing to read "Paul M. Donovan", is written over a horizontal line.

Paul M. Donovan